

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0424P

**Sales and Use Tax
For Calendar Years 1998, 1999, and 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited for calendar years 1998, 1999, and 2000. Upon audit it was discovered that the taxpayer failed to remit sales tax on a portion of its sales and had no evidence of exemption. In addition, taxpayer failed to self-assess use tax on a majority of its non-taxed taxable purchases.

Taxpayer requests abatement of the penalty due to human error.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that it consistently files its sales tax returns in Indiana on time and has been prudent in determining the proper amount of sales tax liability. Taxpayer states that the error was not due to misrepresentation or intentional disregard of Indiana sales tax rules but the result of pure clerical oversight.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer was previously audited and failed to remit use tax due on clearly taxable items. Taxpayer remitted less than two percent (2%) in 1998, no percent in 1999, and approximately six percent (6%) in 2000 of the use tax due, and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.